REMARKS

The claims appearing in this application were 3 through 9. Claims 3 through 9 were rejected, with claims 8 and 9 being rejected as being anticipated by Barnes, et al. and claims 3, 8, and 9 as being anticipated by Ruden. Claims 4 through 7 were rejected as being unpatentable under 35 U.S.C. § 103(a). New claims 10 through 15 have been added. Claim 9 has been cancelled, therefore, the claims remaining under consideration are 3 through 8 and 10 through 15. Applicant respectfully requests reconsideration of claims 3 through 8, consideration of newly added claims 10 through 15 and the issuance of a Notice of Allowance with respect thereto.

Applicant's invention is directed to a free-standing portable exercise device which is used by the user to execute push-ups while the user is disposed in an inclined but standing position and for simultaneously exercising the abdominal muscles of the user while the user is executing the push-ups. Applicant's free-standing portable exercise device includes a tubular base member which rests upon the floor and also has two elevated substantially stationary spaced-apart handles which are supported by a structure above and connected to the base. The device includes an upwardly spring-biased pad supported by the structure and positioned between the stationary handles. The pad is contacted by the abdomen of the user during the execution of the push-up exercises. The pad is upwardly spring-biased and is pivotally supported on the structure. As the user performs the push-ups, the pad is contacted by the user's

abdomen causing the pad to move forwardly and downwardly relative to the stationary handles and the pad has a major face which maintains a position in a plane substantially parallel to the abdominal area of the exercising user. Attached hereto as Exhibit "A" is a document which describes a plurality of exercise routines which a user may accomplish with the free-standing portable exercise device as claimed in this application. As is shown in the various routines, the exercising user is in an inclined position but is effectively standing, being either supported upon his knees or his feet while performing the push-up exercises.

Claim 9, the only independent claim previously appearing in the application, was rejected as being anticipated by Barnes, et al. As above indicated, claim 9 has been cancelled. Newly submitted independent claims 10 and 11, it is respectfully submitted are not anticipated by the patent to Barnes, et al. Barnes, et al. discloses an exercise device having a force engine which includes a gas spring 23 which may be adjusted to various positions so that the force engine is capable of being utilized either in a neutral position, an assistive position, or a resistive position depending upon the strength and fitness of the user. The exercise device of Barnes, et al. may be utilized for numerous types of exercises such as sit-ups, push-ups, and abdominal flexion and the like.

The device of Barnes, et al. may be used to do push-ups as illustrated in Figure 8. In performing a push-up, the ventral part of the user's torso contacts the guide arm 31 and the user grasps the push-up handles 11-12 while the lower body support 18 is set at an angle close to parallel to the floor with the feet of the user engaging the rollers 21.

During an assistive exercise, the gas spring 23 and the guide arm 31 are placed in a position as illustrated in Figure 8. The weight of the declining body of the user causes the guide arm 31 to rotate toward the floor. During a resistive exercise, the arm of the gas spring 23 is moved to the right so that the user is in a desired position to exert the added resistance on the body. During the resistive exercise the user is connected to the guide arm 31 by a belt or harness thereby allowing the user to pull up on the guide arm 31 rotating it toward the ceiling.

It is respectfully submitted that Barnes, et al. does not disclose an upwardly spring-biased pad having an outer major face supported by a structure which is connected to the base and which is positioned between the handles and is pivotally supported on the structure. Since there is no such pad disclosed in Barnes, et al., there is no disclosure in Barnes, et al. for such a pad to engage the abdomen of the user and to move in an arcuate, forward, and downward direction when engaged and pressed upon by the abdomen of the exercising user. Therefore, these material limitations of claim 10 are not found in Barnes, et al. Similar limitations are recited in independent claim 11 and it is respectfully submitted the elements cited in claim 11 are not found in Barnes, et al.

Federal Circuit Decisions repeatedly emphasize that anticipation is established only if (1) all elements of an invention, as stated in a patent claim, (2) are identically set forth, and (3) in a single prior art reference. In re Gechter v. Davidson, 116 F.3d 1454 (Fed. Cir. 1997) where the court stated "Under 35 U.S.C. § 102, every limitation of a

claim must identically appear in a single prior art reference for it to anticipate the claim." In re Paulsen, 30 F.3d 1475 (Fed. Cir. 1994). Since the elements as above described are not found in Barnes, et al., applicant respectfully submits that independent claims 10 and 11 as presently under consideration herein are not anticipated by Barnes, et al.

Claims 3, 8, and 9 were also rejected under 35 U.S.C. § 102(b) as being anticipated by Ruden. Applicant respectfully traverses this rejection. Applicant respectfully submits that the only similarity between Ruden and applicant's exercising device is that they are both exercising devices which do include resistances. The exercising apparatus of Ruden includes two foot resistances 13 and 14, two hand resistances 15 and 16 and a back resistance 21 mounted on uprights. Each of these resistances includes pads, stems, and springs interposed between the uprights and the pads. In Figures 3 and 4, there is a body support pad 23 along with the hand and foot resistances. Each of the various resistances are manipulated by the user by compression against the springs through movement of the hands, feet or body. Applicant respectfully submits that the structure as defined in claims 10 and 11 is not found or even hinted at by Ruden. For example, there is no tubular base, there is no two elevated stationary spaced-part handles supported by a structure above the base, there is no upwardly spring-biased pad which is pivotally supported on the structure so that the pad moves in an arcuate forward, downward direction when engaged and pressed upon by the abdomen of an exercising user doing push-ups. Since these numerous elements of the invention as defined in claims 10 and 11 are not found in the

patent to Ruden, applicant respectfully submits that claims 10 and 11 are not anticipated by the patent to Ruden. (See Federal Circuit citations above.)

Claims 8 and 9 were rejected under 35 U.S.C. § 102(b) as being anticipated by Mullen. The structure disclosed by the patent to Mullen is a metallic box 38 supported by a plurality of springs 28, 29, and 30 upon a lower metal plate 2 which includes extension arms 4 and 6 which support metal hand bars 8 and 10 for use in performing push-up exercises. The user clasps the hand bars 8 and 10 with his hands and assumes the push-up position with his chest above the padding 39 on the metallic box 38. The user then performs traditional push-ups. As the user's chest, not his abdomen, moves downward, it comes into contact with the padding 39 forcing the box 38 to move downward compressing the springs 28, 29, and 30 thus generating a resisting upward force on the box 38. This force assists the user in doing the push-ups by reducing the amount of weight that the user's muscles must lift. See column 7, lines 1 through 12. Applicant respectfully submits that Mullen discloses a structure in which the upper metal box 38 is capable of only perpendicular movement as dictated by the spring guides 32, 33, 34, and 37, etc. and therefore Mullen does not teach or suggest a free-standing portable exercise device for executing push-ups in an inclined standing position and for simultaneously exercising the abdominal muscles of the user which device includes a base, two elevated substantially stationary spaced-apart handles supported by the structure above the base, an upwardly spring-biased pad pivotally supported by the structure being positioned between the handles to be contacted by the abdomen of an exercising user which moves in a angular, forward, and downward direction when

pressed upon by the abdomen of an exercising user, which pad is pivotally supported relative to the structure with the pad assuming a plane substantially parallel to and in contact with the abdominal area of the user while the user is executing push-ups. Since there is no means for pivotally supporting a pad on a structure and there is no ability for the pad to move in an arcuate, forward, and downward direction when engaged and pressed upon by the abdomen of an exercising user, applicant respectfully submits that claims 10 and 11 as presently under consideration herein are not anticipated by the patent to Mullen.

Applicant respectfully submits in view of the foregoing remarks and the newly submitted claims 10 and 11, that the independent claims 10 and 11 define subject matter which is patentable over Barnes, et al., Ruden, and Mullen and respectfully requests consideration of newly submitted claims 10 and 11 and an issuance of the Notice of Allowance with respect thereto. Claims 3 through 8 are dependent from claim 10 either directly or indirectly and thus merely add additional limitations to the structure as defined by claim 10 which as above set forth defines patentable subject matter. Applicant therefore respectfully submits that claims 3 through 8 are also allowable as is claim 10.

Claims 12 through 15 are each dependent from independent claim 11, either directly or indirectly, and thus, therefore, also add additional limitations to allowable claim 11 and it is respectfully submitted are also allowable. Applicant therefore

respectfully requests consideration of claims 11 through 15 and the issuance of a Notice of Allowance with respect thereto.

Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ruden in view of Alviso. The discussion of Ruden above set forth is by this reference repeated herein. Alviso is directed to a device for manipulating the hard and soft tissues of the human foot to restore the natural intended alignment and functioning of the human body. As above indicated, Ruden does not disclose the elements set forth in claims 10 or 11 and even if modified by Alviso, it would not render claim 4 obvious. Furthermore, there must be a teaching, motivation or suggestion to combine the prior art references to create the claimed invention found in some place other than the inventor's disclosure. In re Rouffet, 149 F.3d 1350 (Fed. Cir. 1998); In re Kahn, 441 F.3d 977 (Fed. Cir. 2006). Where is there any teaching, motivation or suggestion to combine a device for manipulating the hard and soft tissues of the human foot as described by Alviso in any exercising device, much less in an exercising device of the type taught by Ruden. Applicant therefore respectfully submits that claim 4 defines subject matter which is patentable over Ruden as modified by Alviso and therefore requests reconsideration thereof and an issuance of a Notice of Allowance with respect thereto.

Claims 5 through 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mullen in view of Anderson, et al. The comments with regard to the reference Mullen above set forth are by this reference incorporated herein. Anderson, et al. is a

stoop labor assisting device. It is true that Anderson, et al. teaches a leaf spring of a specific type but applicant is not claiming a leaf spring but rather is claiming a combination of elements resulting in a free-standing portable exercise device for executing push-ups in an inclined standing position and for simultaneously exercising the abdominal muscles of the user, one of the elements of which in dependent claims 5 through 7 are one or more leaf springs. As above pointed out, Mullen is lacking in the teaching of the structure as defined in claims 10 and 11 and the addition of the leaf springs to that structure is not suggested or even hinted at by Anderson, et al. or any other reference. As above pointed out, there must be a teaching, motivation or suggestion to combine the prior art references to create the claimed invention found in some place other than the inventor's disclosure. Where is the teaching, motivation or suggestion for the combination as suggested by the Examiner. Applicant respectfully submits that claims 5 through 7 define subject matter which is patentable over the combination of Mullen and Anderson, et al. and therefore respectfully requests reconsideration of claims 5 through 7 and the issuance of a Notice of Allowance with respect thereto.

In view of the foregoing amendments and these remarks, Applicant respectfully submits that claims 3 through 8 and 10 through 15 define a free-standing portable exercise device for executing push-ups in an inclined standing position and for simultaneously exercising the abdominal muscles of the user which is patentably distinct over the references of record taken separately or collectively. Applicant therefore requests reconsideration of claims 3 through 8 and consideration of newly

submitted claims 10 through 15 and the issuance of a Notice of Allowance with respect thereto.

The Director is authorized to charge any additional fee(s) or any underpayment of fee(s), or to credit any overpayments to Deposit Account **50-0337**. Please ensure that Attorney Docket No. 7632-101/10413784 is referred to when charging any payments or credits for this case.

Respectfully submitted,

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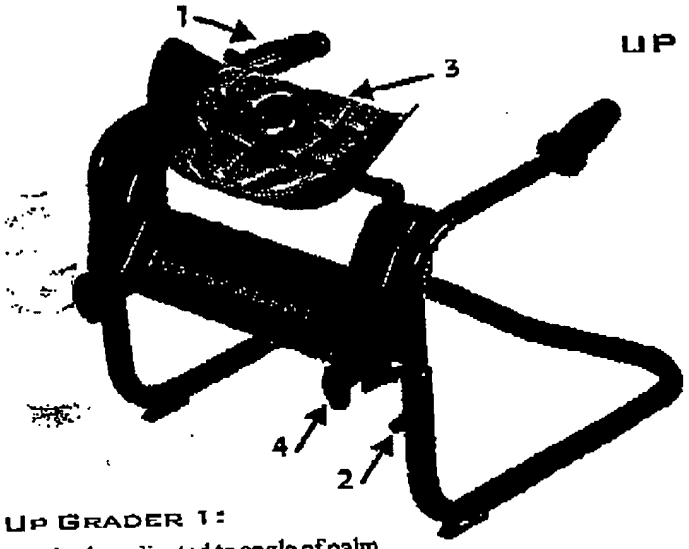
By _____
Billy A. Robbins
Reg. No. 18,313

Customer No. 000167
Fulbright & Jaworski L.L.P.
555 South Flower Street
Forty-First Floor
Los Angeles, CA 90071
Phone: (213) 892-9310
Fax: (213) 892-9494
E-mail: brobbins@fulbright.com

UP-GRADER LTD.
Product Development Tel: 972-8-6652913 Fax: 972-8-6652914 Mobile: 052-2621121
uprader@bezeqint.net

Overview

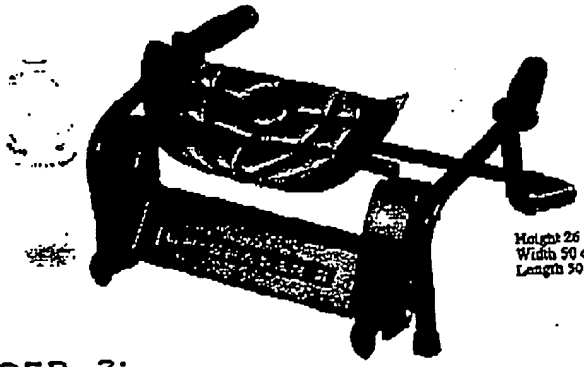
UP GRADER 1



Height 46 cm, 18 inch
Width 50 cm, 20 inch
Length 50 cm, 20 inch

UP GRADER 1:

1. Hand grips adjusted to angle of palm
2. Telescopic join
3. Plastic surface with protrusions made of foamed material, supported by springs, for strengthening abdominal muscles. During pushups, the abdominal muscles alternatively push against the surface and release
4. Screw for adjusting resistance level of the elastic surface's spring, allowing the user to choose the difficulty level for abdominal muscles



Height 26 cm, 10 inch
Width 50 cm, 20 inch
Length 50 cm, 20 inch

UP GRADER 2:

This device operates on a similar principle to the Up Grader 1 but is compact and portable. It is intended for fitness training at team sports grounds and for anyone engaged in physical fitness who doesn't want the telescopic extension option.

EXHIBIT "A"

The exercise enables users to perform dozens of abdominal presses and holds on the resistant spring surface.

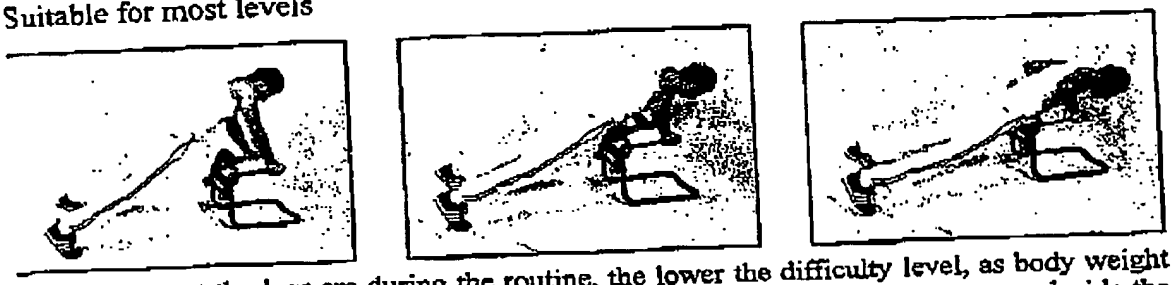
Multi-muscle routine 1

Suitable for most levels

The exercise is performed with bent knees, on a towel or pillow. The knees become the main axis of movement with the back remaining straight. This routine is aimed specifically at strengthening abdominal muscles, while other muscles and joints are barely involved in the effort. The exercise provides a focused workout of the abdominal muscles, which are a serious problem for men and women, world wide.

Multi-muscle routine 2

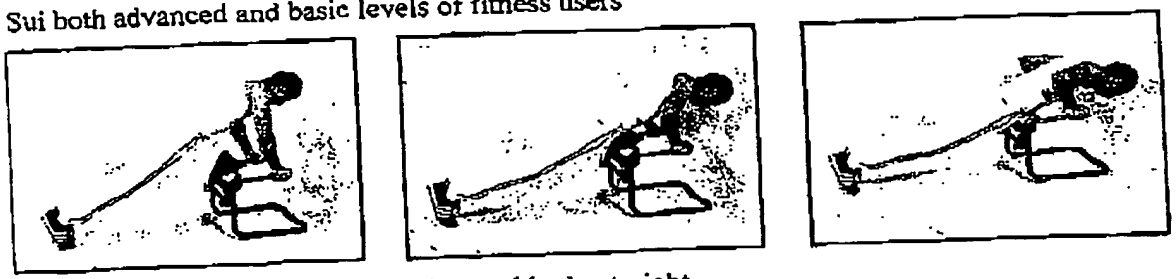
Suitable for most levels



The wider apart the legs are during the routine, the lower the difficulty level, as body weight pressure is transferred from the front of the body to the legs. This enables users to decide the difficulty level suitable for them, according to their fitness and weight at any given time

Multi-muscle routine 3

Sui both advanced and basic levels of fitness users



Carried out with legs tightly together and body straight.

lulti-muscle routine 4

iitable for most levels



basic routine that combines exercising and stretching the leg muscles and groin (doing the lits) without the need for assistance. When the legs are wide apart there is a certain point at hich the user should feel the leg muscles and groin being stretched; this is the point where the :ercise should be started.

'hile pressing the spring surface down with the abdomen, the leg and groin stretch is not felt. nly when the body is pushed up almost to a raised position, does body weight cause the legs to ıen wider, leading to stretching the leg muscles and groin, making them more flexible. The tion is repeated as often as the body is pushed up during the exercise.

ıere is no reason why users should not, in accordance with their stamina, remain for an extended ıriod of time in the position where full pressure is felt on the leg and groin muscles. The Up rader's hand grip plays an important additional role in safety, in that it provides the user with mplete control in preventing him from spreading his legs too widely.